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June 15, 2001

RM-10131

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VIA OVERNIGHT MAIL

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A225
Washington, D.C. 20554

Re: I/M/O Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges CCB/CPD 01-12

Dear Secretary Salas:

I have enclosed on original and four copies of the comments of IDT Corporation in the above-captioned matter. Please contact me at (973) 438-4854 if you have any questions.

Respectfully submitted,

Carl Wolf Billek

Carl Wolf Billek
IDT Corporation

C: International Transcription Services
Chief, Competitive Pricing Division, Common Carrier Bureau, FCC

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JUN 18 2001

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**CCB/CPD No. 01-12**
Petition for Rulemaking Regarding	)	
Presubscribed Interexchange Carrier Charges	)	

COMMENTS ON BEHALF OF IDT CORPORATION

I. Introduction

IDT Corporation ("IDT") supports the Petition for Rulemaking ("Petition") filed by the Competitive Telecommunications Association ("CompTel") requesting that the Federal Communications Commission ("Commission") initiate a rulemaking to revise policies governing the charges of incumbent local exchange carriers ("ILECs") for changing the presubscribed interexchange carrier ("PIC") for end-user subscribers. This Petition, initiated by the Commission's own invitation,[1] presents an opportunity for the Commission to review and revise the anti-consumer, anticompetitive $5.00 PIC change charge. The goal of a Commission rulemaking should be to reexamine the policies that established the $5.00 PIC change charge as the industry standard and lower the charge to its cost, thereby eliminating the PIC change charge as a barrier to competition and a economic windfall to ILECs.

II. The $5.00 PIC Change Charge Exceeds ILECs' Cost

In its Petition, CompTel relies largely on the record established in MCI to demonstrate that the $5.00 PIC change charge exceeds the ILECs' cost. In that proceeding, MCI established – and the Commission accepted – the following:

(1) The $5.00 PIC charge was implemented in 1984, when most PIC change requests initiated by interexchange carriers ("IXCs") were required to be faxed or mailed to the defendants and processed on an individual basis, typically requiring up to two weeks to complete.[2]

(2) Advances in technology have permitted ILECs to deploy automated systems permitting virtually instantaneous PIC changes with little or no manual labor.[3]

(3) As a result of these advances in technology, the cost of implementing a PIC change has decreased. In the case of Bell Atlantic (now known as Verizon), this decrease led to costs "substantially less than $5."[4]

(4) Claims by several major ILECs that advances in technology have not led to lowered costs were unsupported.[5]

While the Commission found that MCI demonstrated ILEC cost savings since 1984 for making PIC changes as a result of advances in technology, the Commission declined to find the $5.00 charge unreasonable because MCI did not demonstrate that any Commission orders modified the policies that permitted the $5.00 PIC change charge.[6] Therefore, the Commission concluded, ILECs could have reasonably relied upon these policies, thereby insulating themselves from a retroactive application of unreasonable PIC change charges under 47 U.S.C. § 201(b).[7] While the outcome of MCI upheld the ILEC's PIC change charge, the Commission's reasoning in the proceeding compels a reexamination of the policies in support of the charge in light of the marked changes in long distance competition and local phone service since 1984.

[2] *Id.* at ¶ 8.
[3] *Id.*
[4] *Id.*
[5] *Id.* at ¶ 9.
[6] *Id.*
[7] *Id.* at ¶ 14.

III. Commission Policies Supporting A Non-Cost Based PIC Change Charge Are Inconsistent With Current Technology, Regulatory Policy And Marketplace Realities

The policies permitting the $5.00 PIC change charge cited by the Commission in MCI were:

(1) The PIC charge is not meant solely to be cost based.[8]

(2) One non-cost factor supporting a $5.00 PIC change charge was "the extent [to which] ... a presubscription charge is intended to discourage excessive amounts of shifting back and forth between or among interexchange carriers...."[9]

(2) The second non-cost factor supporting a $5.00 PIC change charge was that developing cost support data for the PIC change charge "presents a difficult challenge to the carriers."[10]

For the reasons stated in CompTel's Petition and below, the above-mentioned policies no longer support a finding that $5.00 is reasonable for a PIC change charge.

In reviewing the "reasonableness" of the $5.00 PIC change charge, the Commission should undertake a two-part review. Under the first part, the Commission should reconsider and reevaluate the policies set forth in the 1984 Access Charge Order[11] and 1987 Access Tariff Order[12] and restated in MCI for declining to implement a cost based charge and permitting a $5.00 PIC change charge. The Commission should limit itself to policies articulated in these orders because "It appears from the record that the Commission has made no further statements regarding the reasonableness of PIC-change charges since the 1987 Access Tariff Order."[13]

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[8] *Id.* at ¶ 13 *citing* 1987 Access Tariff Order at 1446.
[9] *Id.*
[10] *Id.*
[11] Investigation of Access and Divesture Related Tariffs, *Memorandum Opinion and Order*, 55 Rad. Reg. 2d (P&F) 1422 (rel. Apr. 27, 1984)("1984 Access Charge Order").
[12] Annual 1985 Access Tariff Filings, *Memorandum Opinion and Order*, 2 FCC Rcd 1416 (1987)("1987 Access Tariff Order").
[13] MCI at ¶ 12.

IDT agrees with the Commission that "it may well be that the policies reflected in the 1984 Access Charge Order and the 1987 Access Tariff Order are no longer appropriate in light of changes in the industry since that time."[14] The two policies cited by the Commission in support of a non-cost based PIC change charge are that developing cost support data for the PIC change charge "presents a difficult challenge to the carriers,"[15] and that "to the extent that a presubscription charge is intended to discourage excessive amounts of shifting back and forth between or among interexchange carriers, we do not believe a charge geared to this purpose would be unreasonable."[16] CompTel's Petition presents a brief, yet forceful argument that neither policy is reasonable in light of current technology, regulatory policy and marketplace realities.[17] Furthermore, since the Commission has never articulated any other policy supporting a non-cost based charge, there is no other basis upon which the Commission can conclude that a non-cost based charge remains reasonable. Therefore, a rulemaking is compelled to consider how such policies should be revised.

Under the second part of its rulemaking, the Commission should determine the actual cost incurred by an ILEC to implement a PIC change. CompTel properly notes that, while such cost data may not have been available in 1984, it is certainly available in 2001.[18] Additionally, CompTel provides a reasoned argument that any cost studies submitted may include only those additional costs directly attributable to the process of changing a customer's PIC.[19]

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[14] *Id.* at ¶ 13.
[15] *Id.* ¶ 12.
[16] *Id.* at ¶ 11 *quoting* 1984 Access Charge Order at 1422.
[17] *See*, CompTel Petition at pp. 4-7.
[18] CompTel Petition at p. 6.
[19] *Id.* at pp. 9-10.

IV. The Commission Should Not Accept A $1.49 PIC Change Charge "Ceiling" Absent Cost Support

What is less clear in CompTel's Petition is whether the Commission should accept, without cost support, a PIC change charge at or below $1.49, the rate BellSouth has charged since July 1, 1990.[20] IDT recognizes that it may be consistent with Commission precedent to accept rates filed by similarly situated carriers. However, it is not clear that the equipment used by ILECs in 2001 to implement a PIC change is "similarly situated" with that used by BellSouth in 1990. Indeed, telecommunications technology and the cost to provide telecommunications service has changed dramatically since 1990. Ultimately, establishing a *de facto* PIC change charge[21] based on a rate established 11 years ago raises the question of whether the Commission intends to truly set a cost-based rate or whether it intends to limit, but not eliminate excessive recovery through the PIC change charge.

V. Issues The Commission Should Consider In Its Rulemaking

As part of its review of its policies, IDT recommends that the Commission ask carriers to comment on the following:

(1) Should the PIC change charge be cost based? If so:

- (a) What ILEC costs should be included in determining the cost of a PIC change?
- (b) Does developing cost support data for the PIC change charge present a difficult challenge to carriers?
- (c) What is the cost of a PIC change?
- (d) If the PIC change charge cost varies by carrier, should all ILECs be permitted to charge their demonstrated cost?

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[20] *Id.* at pp. 8-9.

[21] Just as nearly all carriers could not establish that their PIC change costs exceeded the $5.00 "ceiling" and therefore chose to impose the $5.00 rate, it is likely that in this proceeding, most carriers will not be able to establish that their PIC change costs exceed $1.49. As a result, the carriers will likely choose to impose the maximum amount permitted without cost support, just as they imposed the $5.00 charge. While this certainly benefits those consumers and IXCs that pay the PIC change charge, it does not necessarily address whether ILECs have implemented a cost-based rate.

(e) If an ILEC fails to demonstrate its cost, at what rate, if any, should the ILEC be permitted to impose a PIC change charge?

(f) Can the Commission establish a revised PIC change charge ceiling and remain consistent with a cost-based approach?

(2) Should the PIC change charge be comprised of cost as well as other factors? If so:

(a) What non-cost factors should the Commission consider?

(b) Upon what reasoning should the Commission include non-cost factors?

(c) Should the Commission include non-cost factors in order to discourage excessive amounts of shifting back and forth between or among interexchange carriers?

(d) Can ILECs that have received Section 271 authority or otherwise provide long distance service charge themselves or affiliated entities a lower PIC change charge than charged to non-affiliated entities?

While these are not the only issues to be considered, they do begin to address some of the fundamental questions surrounding the future of the PIC change charge, namely: whether the charge should serve solely as a means for the ILEC to recover costs incurred for switching a subscriber's carrier or whether the charge should provide a non-cost based source of revenue to the ILEC, thereby raising the cost to the subscriber and/or the IXC for switching service providers.

VI. Conclusion

For the reasons stated herein and in the CompTel Petition, the Commission should initiate a rulemaking proceeding to revise its PIC change charge policies.

Respectfully submitted,

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Dated: June 15, 2001